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REMARKS

The specification has been amended to remove the paragraph objected to by the Examiner. Claims 1, 14, 18-19, 21, 23-26, and 53 have been amended. Claims 2-4, 6, 9, 12-13, 15-17, 20, 33-52 and 55 are canceled. Claims 1, 5, 7-8, 10-11, 14, 18-19, 21-32, 53-54 and 56 are currently pending.

Telephonic Interview

Applicants thank the Examiner Anne Kubelik for the helpful telephone interview on July 15, 2004. The hybridization conditions in the claims as it regards written description and enablement were discussed. This amendment is in response to those discussions.

Withdrawal of Rejections

Applicants thank the Examiner for withdrawal of the rejections of claims 1, 5, 8, 10, 12, 14, 18-19, 21-24, 26-28, 30-32 and 53-54 under 35 U.S.C. 102(b) and 103(a).

Specification Objection

The Examiner has objected to the amendment to the specification filed March 10, 2004, asserting that the amendment incorporates new subject matter. Applicants respectfully disagree with the Examiner's grounds for objection. However, in order to facilitate prosecution in this case applicants have amended the specification, without prejudice or disclaimer, to remove the material added March 10, 2004 to which the Examiner has objected. The applicants expressly reserve the right to revisit this issue in continuation and/or divisional applications.

Claim Objections

The Examiner has objected to claim 12 as being improperly dependent for failing to limit the scope of claim 1. Applicants respectfully disagree with the Examiner's grounds for objection. However, in order to facilitate prosecution in this case applicants have canceled claim 12.

The Examiner has objected to claims 12, 14, 20-21, 23, 26, and 53 for various informalities. Claims 12 and 20 have been canceled. Applicants have made the amendments to claims 14, 21, 23, 26, and 53 as suggested by the Examiner as that they do not alter the scope or

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interpretation of the claims.

In light of the above amendments and canceled claims, applicant respectfully request that the Examiner withdraw the claim objections.

Claim Rejections – 35 USC § 112, first paragraph

The Examiner has rejected claims 1, 5, 10-12, 14, 18-19, 21-32 and 53-54 as failing to comply with the written description requirement asserting that the claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one of skill in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The Examiner has asserted that the hybridization conditions were not properly incorporated by reference and therefore constitute new matter. Applicants respectfully disagree with the Examiner's grounds for rejection. However, in order to facilitate prosecution in this case, applicants have amended the claims, without prejudice or disclaimer, to remove the hybridization conditions. The applicants expressly reserve the right to revisit this issue in continuation and/or divisional applications.

Claim Rejections – 35 USC § 112, first paragraph

The Examiner has rejected claims 1, 5, 10-12, 14, 18-19, 21-32 and 53-54 as failing to enable one of skill in the art to make and use the claimed invention. The Examiner has asserted that the application fails to provide adequate guidance to make and use nucleic acids that encode Na⁺/H⁺ transporter-encoding nucleic acids that hybridize to SEQ ID NO:1. Applicants respectfully disagree with the Examiner's grounds for rejection. However, in order to facilitate prosecution in this case, applicants have amended claims 1, 18, and 53, without prejudice or disclaimer, to remove the hybridization conditions. Claims 5, 10-11, 14, 19, 21-32 and 54 depend from these three claims and therefore include the amendments. Claim 12 has been canceled. The applicants expressly reserve the right to revisit this issue in continuation and/or divisional applications.

In light of these amendments, applicants request that the Examiner withdraw the rejection to claims 1, 5, 10-11, 14, 18-19, 21-32 and 53 under 35 U.S.C. § 112, first paragraph.

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Claim Rejections – 35 USC § 112, first paragraph

The Examiner has rejected claims 1, 5, 7-8, 10-12, 14, 18-19, 21-32 and 53-54 as failing to comply with the written description requirement. The Examiner has asserted that the application does not describe nucleic acids that hybridize to SEQ ID NO:1. Applicants respectfully disagree with the Examiner's grounds for rejection. However, in order to facilitate prosecution in this case, applicants have amended claims 1, 18, and 53, without prejudice or disclaimer, to remove the hybridization conditions. Claims 5, 7-8, 10-11, 14, 19, 21-32 and 54 depend from these three claims and therefore include the amendments. Claim 12 has been canceled. The applicants expressly reserve the right to revisit this issue in continuation and/or divisional applications.

In light of these amendments, applicants request that the Examiner withdraw the rejection to claims 1, 5, 7-8, 10-11, 14, 18-19, 21-32 and 53 under 35 U.S.C. § 112, first paragraph.

Claim Rejections – 35 USC § 112, second paragraph

The Examiner has rejected claims 1, 5, 7-8, 10-12, 14, 18-19, 21-32 and 53-54 as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. The Examiner has asserted that the recitation "coding strand" is unclear because both strands could encode peptides.

Applicants respectfully disagree with the Examiner's grounds for rejection. However, in order to facilitate prosecution in this case, applicants have amended claims 1, 18, and 53, without prejudice or disclaimer, to remove the hybridization conditions. Claims 5, 7-8, 10-11, 14, 19, 21-32 and 54 depend from these three claims and therefore include the amendments. Claim 12 has been canceled.

The Examiner has rejected claim 12 as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Applicants have canceled claim 12 as discussed above.

The Examiner has rejected claim 19 as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. The Examiner

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has asserted that it is unclear whether the progeny of the cell would comprise the expression transgene. Applicants respectfully disagree with the Examiner's grounds for rejection. One of skill in the art would recognize that the progeny would comprise the expression transgene. However, in order to facilitate prosecution in this case, applicants have amended the claim, to state explicitly that the progeny also comprises the expression transgene.

The Examiner has rejected claims 24 and 25 as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Applicants have amended claims 24 and 25 as suggested by the Examiner.

The Examiner has rejected claim 53 as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. The Examiner has asserted that the group members in the recitation are not cells. Applicants respectfully disagree with the Examiner's grounds for rejection. One of skill in the art would recognize that the group defined in the recitation refers back to the nucleic acid molecule. However, in order to facilitate prosecution in this case, applicants have amended the claim, without prejudice or disclaimer, to more closely link the nucleic acid molecule to the group.

Applicants respectfully request that the Examiner withdraw the definiteness rejections based upon the above comments and amendments.

Applicants thank the Examiner for allowing claim 56 and indicating that the prior art fails to teach or suggest the isolated nucleic acid of SEQ ID NO:1.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance, given that the Examiner has indicated on page 6, lines 6-7, of the Office Action sent May 27, 2004 that the specification is enabling for nucleic acids that encode proteins with 95% identity to SEQ ID NO:2. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

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In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 529642000200.

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Respectfully submitted,

By 
Otis Littlefield
Registration No.: 48,751
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105
(415) 268-7000
Attorneys for Applicant

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